IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.2663 OF 2004
IN
APPEAL (LODGING) NO.566 OF 2004
IN
NOTICE OF MOTION NO.2052 OF 2002
IN
SUIT NO.1405 OF 2002

Mrs.Salma Zafar & ors. .. Appellants

v/s.

Mrs.Fatima Abdul Rehman Omer .. Respondent

Mr.Vishwajeet Sawant i/by M/s.Dh.Liladhar & Co.
for appellants.

Mr.Jimmy Awasia i/by Mr.S.K.Srivastava for
respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 14th December, 2004

P.C.

Heard.

2. By this notice of motion, the appellants pray for condonation of delay in filing the appeal. The delay is of 158 days. The appeal is directed against the order dated 25th February, 2004. The application for certified copy of the aforesaid order was made on 6th March, 2004. The certified copy was ready on 15th April, 2004. It was delivered to the advocates for the appellants on 13th May, 2004. The appeal has been preferred on 10th September, 2004. The explanation for delay is

that upto 6th June, 2004, the High Court was closed due to summer vacation. The appellant Nos.1 and 3 were residing in Riyadh, Saudi Arabia and they came to Bombay on 30th June, 2004. The said appellants on their arrival changed the advocates and solicitors for the entire case and they came on record on 13th July, 2004. The preparation of the appeal took time since there were various proceedings taken out in the suit and the proceedings were bulky and needed to be approved by the appellants.

3. The respondent has filed reply affidavit in opposition to the notice of motion.

4. The facts noticed by us would show that there was no lack of diligence on the part of the appellants in filing the appeal. The application for certified copy of the impugned order dated 25th February, 2004 was made quickly on 6th March, 2004. The certified copy was ready on 15th April, 2004 and delivered to the advocates of the appellant on 13th May, 2004. The High Court was closed during summer vacation upto 6th June, 2004. The appellant Nos.1 and 3 came to Bombay on 30th June, 2004 and changed their advocates somewhere on 13th July, 2004. It is true that considerable time was taken by the new advocates in preparation of the appeal

but for that the appellants cannot be faulted. All in all, we are satisfied that the appellants prosecuted the matter with due diligence and delay in filing the appeal is sufficiently explained. The inconvenience caused to the respondent can be compensated by award of reasonable cost.

5. We, accordingly, condone the delay in filing the appeal subject to payment of cost of Rs.10,000/- by the appellants to the respondent within four weeks from today. Office is directed to process the appeal and post it for admission after six weeks.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)